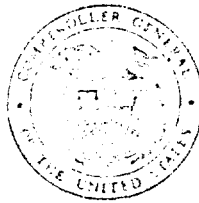


## DECISION



THE CONTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-212183

DATE: August 30, 1983

MATTER OF: Buckeye Pacific Corporation

## DIGEST:

Bid in which the bidder inserted the word "net" next to the 20-day option in the prompt payment discount section of the solicitation was properly rejected as nonresponsive, since it could be reasonably read as taking exception to the solicitation's 30-day payment terms.

Buckeye Pacific Corporation protests the rejection of its bid as nonresponsive under solicitation No. 8FCO-C7-40039 (Lot 2) issued by the General Services Administration (GSA) for plywood panels. GSA rejected the bid as nonresponsive to the 30-day payment terms specified by the solicitation because Buckeye had inserted the word "net" next to the 20-day option in the solicitation's prompt payment discount section. Buckeye contends that the rejection was improper because the insertion had no material effect on the responsiveness of the bid.

We summarily deny the protest.

The solicitation was issued in two parts, with Part I, properly executed and submitted by Buckeye, establishing the terms, conditions, nomenclature and specifications for future plywood requirements, and providing that the payment due date under any resulting contract would be the 30th calendar day after the later of (1) the date of actual receipt of a proper invoice or (2) the date of acceptance of the supplies by the Government. Part I further noted that its submission by the offeror constituted a binding agreement that all provisions contained in it would become an enforceable part of any subsequent contract.

GSA then issued its Lot 1 requirements under Part II of the solicitation. Award was made to Buckeye as the low bidder for Lot 1, the contracting officer in this circumstance not objecting to Buckeye's insertion of the word "net" next to the 20-day option in the prompt payment

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discount section. Subsequently, GSA issued its Lot 2 requirements, and again Buckeye inserted the word "net" next to the 20-day option. Although Buckeye was initially considered for the Lot 2 award, its bid was ultimately rejected as nonresponsive to the specified 30-day payment terms. Buckeye protests that the insertion was merely a clerical error immaterial to the responsiveness of its Lot 2 bid, and urges that GSA's acceptance of the Lot 1 bid with the same error effectively constituted a form of waiver. We do not agree.

In order to be responsive, a bid must contain an unequivocal offer to provide the requested items in total conformance with the material terms of the solicitation, and any bid that does not conform is nonresponsive and must be rejected. A material deviation is one that affects the price, quality, quantity or delivery of the goods or services offered. Fluke Trendar Corporation, B-196071, March 13, 1980, 80-1 CPD 196.

Here, we think Buckeye's insertion of the word "net" rendered its bid nonresponsive because with the insertion the bid could reasonably be read as taking exception to the solicitation payment terms, an exception which could have affected Buckeye's offered price. Although the word "net" was inserted in the prompt payment discount section, it was inserted on the 20-day payment line (the section also provided 10-day and 30-day lines). Because the word "net" was placed precisely on that 20-day line, we think the insertion not only manifests an intent not to offer a prompt payment discount, but also strongly suggests that the bidder is seeking to be paid the net amount within 20 days.

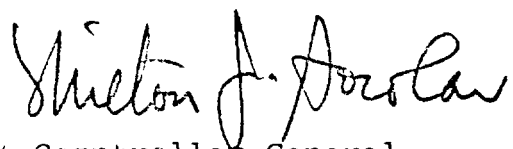
Under the Prompt Payment Act, 31 U.S.C.A. §§ 3901-3906 (West Supp. 1983), which essentially provides that the Government must pay interest penalties on overdue contract payments, the payment due date is that specified in the contract, or if none is specified, the 30th day after receipt of a proper invoice. With certain limited exceptions, the Government is granted a 15-day grace period beyond the due date before interest may be demanded by a contractor. In the present case, Part I of the solicitation incorporated 30-day payment terms, as detailed above, into all subsequent contracts. The insertion in Buckeye's bid, reasonably read as requiring payment in 20 days, is

inconsistent with these terms. As such, it must be viewed as an attempt either to impose an interest penalty on the Government at a date earlier than that which the solicitation established, or to enable Buckeye to obtain payment 10 days sooner than provided for. This obviously could have given Buckeye a bidding advantage over its competitors, who would not be afforded the benefit of the earlier payment. RAD Oil Company, Inc., B-209047, October 20, 1982, 82-2 CPD 352.

With regard to Buckeye's contention that the insertion of the word "net" was a mere clerical error, we point out that Buckeye bid exactly the same way for the previous lot, so that it appears that the insertion was intentional and not a mere clerical error. Moreover, even if it were a clerical error, that would afford no relief to Buckeye, since a bid made nonresponsive by such an error may not be corrected to make it responsive. Dictaphone Corporation, B-204966, May 11, 1982, 82-1 CPD 452.

Under the circumstances, we agree with GSA that the protester's bid materially deviated from the solicitation's requirements. The bid therefore properly was declared nonresponsive. The fact that GSA accepted Buckeye's Lot 1 bid has no bearing upon rejection of the Lot 2 bid as nonresponsive, for the erroneous acceptance of a previous bid does not compel the agency to perpetuate the error by accepting the present bid. Isometrics, Inc., B-203898, December 30, 1982, 82-2 CPD 588.

The protest is summarily denied.

for   
Comptroller General  
of the United States